

AMENDMENTS TO LB 271

Introduced by Health and Human Services Committee:

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 71-101, Revised Statutes Supplement,
4 2005, is amended to read:

5 71-101 Sections 71-101 to 71-1,107.30, 71-1,133 to
6 71-1,338, 71-1,343 to 71-1,361, 71-1301 to 71-1354, and 71-2801 to
7 71-2823 and sections 3 and 6 of this act shall be known and may be
8 cited as the Uniform Licensing Law.

9 For purposes of the Uniform Licensing Law, unless the
10 context otherwise requires:

11 (1) Board or professional board means one of the boards
12 appointed by the State Board of Health pursuant to sections 71-111
13 and 71-112;

14 (2) Licensed, when applied to any licensee in any of the
15 professions named in section 71-102, means a person licensed under
16 the Uniform Licensing Law;

17 (3) Profession or health profession means any of the
18 several groups named in section 71-102;

19 (4) Department means the Department of Health and Human
20 Services Regulation and Licensure;

21 (5) Whenever a particular gender is used, it is construed
22 to include both the masculine and the feminine, and the singular
23 number includes the plural when consistent with the intent of the

1 Uniform Licensing Law;

2 (6) License, licensing, or licensure means permission to
3 engage in a health profession which would otherwise be unlawful
4 in this state in the absence of such permission and which is
5 granted to individuals who meet prerequisite qualifications and
6 allows them to perform prescribed health professional tasks and use
7 a particular title;

8 (7) Certificate, certify, or certification, with respect
9 to professions, means a voluntary process by which a statutory,
10 regulatory entity grants recognition to an individual who has met
11 certain prerequisite qualifications specified by such regulatory
12 entity and who may assume or use the word certified in the title or
13 designation to perform prescribed health professional tasks. When
14 appropriate, certificate means a document issued by the department
15 which designates particular credentials for an individual;

16 (8) Lapse means the termination of the right or privilege
17 to represent oneself as a licensed, certified, or registered person
18 and to practice the profession when a license, certificate, or
19 registration is required to do so;

20 (9) Credentialing means the totality of the process
21 associated with obtaining state approval to provide health care
22 services or human services or changing aspects of a current
23 approval. Credentialing grants permission to use a protected
24 title that signifies that a person is qualified to provide the
25 services of a certain profession. Credential includes a license,
26 certificate, or registration; and

27 (10) Dependence means a compulsive or chronic need for

1 or an active addiction to alcohol or any controlled substance or
2 narcotic drug.

3 Sec. 2. Section 71-1,296, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-1,296 For purposes of sections 71-1,295 to 71-1,338
6 and sections 3 and 6 of this act, the definitions found in sections
7 71-1,297 to 71-1,311 and section 3 of this act shall be used.

8 Sec. 3. (1) Independent mental health practice means the
9 provision of treatment, assessment, psychotherapy, counseling, or
10 equivalent activities to individuals, couples, families, or groups
11 for behavioral, cognitive, social, mental, or emotional disorders,
12 including interpersonal or personal situations.

13 (2) Independent mental health practice includes
14 diagnosing major mental illness or disorder, using psychotherapy
15 with individuals suspected of having major mental or emotional
16 disorders, or using psychotherapy to treat the concomitants of
17 organic illness, with or without consultation with a qualified
18 physician or licensed psychologist.

19 (3) Independent mental health practice does not include
20 the practice of psychology or medicine, prescribing drugs or
21 electroconvulsive therapy, treating physical disease, injury, or
22 deformity, or measuring personality or intelligence for the purpose
23 of diagnosis or treatment planning.

24 Sec. 4. Section 71-1,307, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 71-1,307 (1) Mental health practice shall mean means the
27 provision of treatment, assessment, psychotherapy, counseling, or

1 equivalent activities to individuals, couples, families, or groups
2 for behavioral, cognitive, social, mental, or emotional disorders,
3 including interpersonal or personal situations.

4 (2) Mental health practice shall does not include:

5 (a) The the practice of psychology or medicine;

6 (b) Prescribing ~~prescribing~~ drugs or electroconvulsive
7 therapy;

8 (c) Treating ~~treating~~ physical disease, injury, or
9 deformity;

10 (d) Diagnosing ~~diagnosing~~ major mental illness or
11 disorder except in consultation with a qualified physician or a
12 psychologist licensed to engage in the practice of psychology as
13 provided in section 71-1,206.14;

14 (e) Measuring ~~measuring~~ personality or intelligence for
15 the purpose of diagnosis or treatment planning;

16 (f) Using ~~using~~ psychotherapy with individuals
17 suspected of having major mental or emotional disorders except in
18 consultation with a qualified physician or licensed psychologist;
19 or

20 (g) Using ~~or using~~ psychotherapy to treat the
21 concomitants of organic illness except in consultation with a
22 qualified physician or licensed psychologist.

23 (3) Mental health practice shall include includes the
24 initial assessment of organic mental or emotional disorders for the
25 purpose of referral or consultation.

26 (4) Nothing in sections 71-1,306, 71-1,310, and 71-1,311
27 shall be deemed to constitute authorization to engage in activities

1 beyond those described in this section. Persons certified under
2 sections 71-1,295 to 71-1,338 and sections 3 and 6 of this act
3 but not licensed under section 71-1,314 shall not engage in mental
4 health practice.

5 Sec. 5. Section 71-1,308, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 71-1,308 (1) Mental health practitioner shall mean means
8 a person who holds himself or herself out as a person qualified
9 to engage in mental health practice or a person who offers or
10 renders mental health practice services. Independent mental health
11 practitioner means a person who holds himself or herself out as a
12 person qualified to engage in independent mental health practice or
13 a person who offers or renders independent mental health practice
14 services.

15 (2) A person who is licensed as a mental health
16 practitioner or an independent mental health practitioner and
17 certified as a master social worker may use the title licensed
18 clinical social worker. A person who is licensed as a mental health
19 practitioner or an independent mental health practitioner and
20 certified as a professional counselor may use the title licensed
21 professional counselor. A person who is licensed as a mental
22 health practitioner or an independent mental health practitioner
23 and certified as a marriage and family therapist may use the
24 title licensed marriage and family therapist. No person shall use
25 the title licensed clinical social worker, licensed professional
26 counselor, or licensed marriage and family therapist unless he
27 or she is licensed and certified as provided in this section

1 subsection.

2 (3) A mental health practitioner shall not represent
3 himself or herself as a physician or psychologist and shall not
4 represent his or her services as being medical or psychological
5 in nature. An independent mental health practitioner shall not
6 represent himself or herself as a physician or psychologist.

7 Sec. 6. (1) No person shall hold himself or herself out
8 as an independent mental health practitioner unless he or she is
9 licensed as such by the department. A person shall be qualified to
10 be a licensed independent mental health practitioner if he or she:

11 (a) (i) Graduated from an educational program accredited
12 by a national accrediting agency or from a program found by the
13 board to be substantially equivalent to an accredited program;

14 (ii) Is licensed as a provisional mental health
15 practitioner or a licensed mental health practitioner; and

16 (iii) Has three thousand hours of experience obtained
17 in a period of not less than two nor more than five years,
18 one-half of which is comprised of contact with clients diagnosed
19 under the major mental illness or disorder category and supervised
20 by a licensed physician, a licensed psychologist, or a licensed
21 independent mental health practitioner; or

22 (b) (i) Graduated from an educational program which is not
23 accredited by a national accrediting agency nor found by the board
24 to be substantially equivalent to an accredited program;

25 (ii) Is licensed as a provisional mental health
26 practitioner or a mental health practitioner; and

27 (iii) Has seven thousand hours of experience obtained in

1 a period of not less than ten years, one-half of which is comprised
2 of contact with clients diagnosed under the major mental illness
3 or disorder category and supervised by a licensed physician, a
4 licensed psychologist, or a licensed independent mental health
5 practitioner.

6 (2) The experience required under this section shall be
7 documented in a reasonable form and manner as prescribed by the
8 board, which may consist of sworn statements from the applicant and
9 his or her employers and supervisors. The board shall not in any
10 case require the applicant to produce individual case records.

11 (3) The application for an independent mental health
12 practitioner license shall include the applicant's social security
13 number.

14 Sec. 7. Section 71-1,315, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-1,315 Each licensed mental health practitioner and
17 each licensed independent mental health practitioner shall, in
18 the period since his or her license was issued or last renewed,
19 complete continuing competency activities as required by the board
20 pursuant to section 71-161.09 as a prerequisite for the licensee's
21 next subsequent license renewal.

22 Sec. 8. Section 71-1,316, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-1,316 The department, upon the advice of the board,
25 shall adopt and promulgate rules and regulations to administer
26 sections 71-1,312 to 71-1,315 and section 6 of this act, including
27 rules and regulations governing:

1 (1) Ways of clearly identifying students, interns, and
2 other persons providing mental health practice services under
3 supervision;

4 (2) The rights of persons receiving mental health
5 practice services;

6 (3) The rights of clients to gain access to their
7 records, including the right of any client to receive one complete
8 copy of his or her record free of charge;

9 (4) The contents and methods of distribution of
10 disclosure statements to clients of licensed mental health
11 practitioners; and

12 (5) Approval of examinations and educational programs.

13 Sec. 9. Section 71-1,333, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 71-1,333 (1) The department shall issue a certificate,
16 signed by the director, to each person who is qualified to be a
17 certified master social worker, certified social worker, certified
18 professional counselor, or certified marriage and family therapist.

19 (2) The department shall issue a license, signed by
20 the director, to each person who is qualified to be a licensed
21 mental health practitioner or licensed independent mental health
22 practitioner.

23 Sec. 10. Section 71-1,335, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-1,335 No person licensed or certified pursuant to
26 sections 71-1,295 to 71-1,338 and sections 3 and 6 of this act
27 shall disclose any information he or she may have acquired from any

1 person consulting him or her in his or her professional capacity
2 except:

3 (1) With the written consent of the person or, in
4 the case of death or disability, of the person's personal
5 representative, any other person authorized to sue on behalf
6 of the person, or the beneficiary of an insurance policy on the
7 person's life, health, or physical condition. When more than one
8 person in a family receives therapy conjointly, each such family
9 member who is legally competent to execute a waiver shall agree to
10 the waiver referred to in this subdivision. Without such a waiver
11 from each family member legally competent to execute a waiver,
12 a practitioner shall not disclose information received from any
13 family member who received therapy conjointly;

14 (2) As such privilege is limited by the laws of the State
15 of Nebraska or as the ~~Board of Mental Health Practice~~ board may
16 determine by rule and regulation;

17 (3) When the person waives the privilege by bringing
18 charges against the licensee; or

19 (4) When there is a duty to warn under the limited
20 circumstances set forth in section 71-1,336.

21 Sec. 11. Section 71-1,336, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-1,336 (1) There shall be no monetary liability on the
24 part of, and no cause of action shall arise against, any person who
25 is licensed or certified pursuant to sections 71-1,295 to 71-1,338
26 and sections 3 and 6 of this act for failing to warn of and protect
27 from a patient's threatened violent behavior or failing to predict

1 and warn of and protect from a patient's violent behavior except
2 when the patient has communicated to the mental health practitioner
3 a serious threat of physical violence against himself, herself, or
4 a reasonably identifiable victim or victims.

5 (2) The duty to warn of or to take reasonable precautions
6 to provide protection from violent behavior shall arise only
7 under the limited circumstances specified in subsection (1) of
8 this section. The duty shall be discharged by the mental health
9 practitioner if reasonable efforts are made to communicate the
10 threat to the victim or victims and to a law enforcement agency.

11 (3) No monetary liability and no cause of action shall
12 arise under section 71-1,335 against a licensee or certificate
13 holder for information disclosed to third parties in an effort
14 to discharge a duty arising under subsection (1) of this section
15 according to the provisions of subsection (2) of this section.

16 Sec. 12. Section 71-1,337, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-1,337 The Board of Mental Health Practice shall adopt
19 a code of ethics which is essentially in agreement with the current
20 code of ethics of the national and state associations of the
21 specialty professions included in mental health practice and which
22 the board deems necessary to assure adequate protection of the
23 public in the provision of mental health services to the public.
24 A violation of the code of ethics shall be considered an act of
25 unprofessional conduct.

26 The board shall ensure through the code of ethics and
27 the rules and regulations adopted and promulgated under sections

1 71-1,295 to 71-1,338 and sections 3 and 6 of this act that
2 persons licensed or certified pursuant to sections 71-1,295 to
3 71-1,338 and sections 3 and 6 of this act limit their practice
4 to demonstrated areas of competence as documented by relevant
5 professional education, training, and experience.

6 Intentional failure by a mental health practitioner to
7 report known acts of unprofessional conduct by a mental health
8 practitioner to the department or the board shall be considered
9 an act of unprofessional conduct and shall be grounds for
10 disciplinary action under appropriate sections of the Uniform
11 Licensing Law unless the mental health practitioner has acquired
12 such knowledge in a professional relationship otherwise protected
13 by confidentiality.

14 Sec. 13. Section 71-1,338, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-1,338 Any person who violates any provision of the
17 Uniform Licensing Law related to mental health practice shall be
18 guilty of a Class III misdemeanor, and any such violation by
19 a person licensed or certified pursuant to sections 71-1,295 to
20 71-1,338 and sections 3 and 6 of this act shall be cause for
21 disciplinary action as provided in sections 71-147 to 71-161.18.

22 Sec. 14. Section 71-8402, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-8402 For purposes of sections 71-8401 to 71-8407:

25 (1) Medical records means a provider's record of a
26 patient's health history and treatment rendered;

27 (2) Mental health medical records means medical records

1 or parts thereof created by or under the direction or supervision
2 of a licensed psychiatrist, a licensed psychologist, or a mental
3 health practitioner licensed or certified pursuant to sections
4 71-1,295 to 71-1,338 and sections 3 and 6 of this act;

5 (3) Patient includes a patient or former patient;

6 (4) Patient request or request of a patient includes the
7 request of a patient's guardian or other authorized representative;
8 and

9 (5) Provider means a physician, psychologist,
10 chiropractor, dentist, hospital, clinic, and any other licensed or
11 certified health care practitioner or entity.

12 Sec. 15. Original sections 71-1,296, 71-1,307, 71-1,308,
13 71-1,315, 71-1,316, 71-1,333, 71-1,335, 71-1,336, 71-1,337,
14 71-1,338, and 71-8402, Reissue Revised Statutes of Nebraska, and
15 section 71-101, Revised Statutes Supplement, 2005, are repealed.